

CHAPTER 60

VIRGINIA STORMWATER MANAGEMENT PROGRAM (VSMP) PERMIT REGULATIONS

Part I

4VAC50-60-10. Definitions.

The following words and terms used in this chapter have the following meanings unless the context clearly indicates otherwise.

"Adequate channel" means a channel that will convey the designated frequency storm event without overtopping the channel bank nor causing erosive damage to the channel bed or banks.

"Administrator" means the Administrator of the United States Environmental Protection Agency or an authorized representative.

"Applicable standards and limitations" means all state, interstate, and federal standards and limitations to which a discharge or a related activity is subject under the Clean Water Act (CWA) (33 USC §1251 et seq.) and the Act, including effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices, and standards for sewage sludge use or disposal under §§301, 302, 303, 304, 306, 307, 308, 403 and 405 of CWA.

"Approval authority" means the Virginia Soil and Water Conservation Board or their designee.

"Approved program" or "approved state" means a state or interstate program that has been approved or authorized by EPA under 40 CFR Part 123 (2000).

~~"Aquatic bench" means a 10 to 15 foot wide bench around the inside perimeter of a permanent pool that ranges in depth from zero to 12 inches. Vegetated with emergent plants, the bench augments pollutant removal, provides habitats, conceals trash and water level fluctuations, and enhances safety.~~

~~"Average land cover condition" means a measure of the average amount of impervious surfaces within a watershed, assumed to be 16%. Note that a locality may opt to calculate actual watershed specific values for the average land cover condition based upon 4VAC50-60-110.~~

"Average monthly discharge limitation" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

"Average weekly discharge limitation" means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

"Best management practice (BMP)" means schedules of activities, prohibitions of practices, including both a structural or nonstructural practice, maintenance procedures, and other management practices to prevent or reduce the pollution of surface waters and groundwater systems from the impacts of land-disturbing activities. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Working Draft for Part I, II, III and XIII of the Stormwater Regulations

Thursday, December 21, 2006

~~"Bioretention basin" means a water quality BMP engineered to filter the water quality volume through an engineered planting bed, consisting of a vegetated surface layer (vegetation, mulch, ground cover), planting soil, and sand bed, and into the in situ material.~~

~~"Bioretention filter" means a bioretention basin with the addition of a sand filter collector pipe system beneath the planting bed.~~

"Board" means the Virginia Soil and Water Conservation Board.

"Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

"Channel" means a natural or manmade waterway.

~~"Constructed wetlands" means areas intentionally designed and created to emulate the water quality improvement function of wetlands for the primary purpose of removing pollutants from stormwater.~~

"Comprehensive stormwater management plan" means a plan, which may be integrated with other land development plans or regulations, that spells out how the water quality and quantity components of stormwater are to be managed on a watershed-wide basis.

"Construction activity" means any clearing, grading or excavation associated with large construction activity or associated with small construction activity.

"Contiguous zone" means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone (37 FR 11906).

"Continuous discharge" means a discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

"Control measure" means any best management practice or other method used to prevent or reduce the discharge of pollutants to surface waters.

"Co-permittee" means a permittee to a VSMP permit that is only responsible for permit conditions relating to the discharge for which it is the operator.

"CWA" means the federal Clean Water Act (33 USC §1251 et seq.), formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, and Public Law 97-117, or any subsequent revisions thereto.

"CWA and regulations" means the Clean Water Act (CWA) and applicable regulations promulgated thereunder. For the purposes of this chapter, it includes state program requirements.

"Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

"Department" means the Department of Conservation and Recreation.

~~"Development" means a tract of land developed or to be developed as a unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units~~ land disturbance associated with the construction of residential, commercial, industrial, institutional, recreation, transportation or utility facilities or structures.

"Direct discharge" means the discharge of a pollutant.

Working Draft for Part I, II, III and XIII of the Stormwater Regulations

Thursday, December 21, 2006

"Director" means the Director of the Department of Conservation and Recreation or his designee.

"Discharge," when used without qualification, means the discharge of a pollutant.

"Discharge of a pollutant" means:

1. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
2. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into surface waters from: surface runoff that is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person that do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any indirect discharger.

"Discharge Monitoring Report (DMR)" means the form supplied by the department, or an equivalent form developed by the permittee and approved by the board, for the reporting of self-monitoring results by permittees.

"Draft permit" means a document indicating the board's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit. A notice of intent to terminate a permit, and a notice of intent to deny a permit are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination is not a draft permit. A proposed permit is not a draft permit.

"Effluent limitation" means any restriction imposed by the board on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into surface waters, the waters of the contiguous zone, or the ocean.

"Effluent limitations guidelines" means a regulation published by the administrator under §304(b) of the CWA to adopt or revise effluent limitations.

"Environmental Protection Agency (EPA)" means the United States Environmental Protection Agency.

"Existing permit" means for the purposes of this chapter a permit issued by the permit-issuing authority and currently held by a permit applicant.

"Existing source" means any source that is not a new source or a new discharger.

"Facilities or equipment" means buildings, structures, process or production equipment or machinery that form a permanent part of a new source and that will be used in its operation, if these facilities or equipment are of such value as to represent a substantial commitment to construct. It excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the new source or water pollution treatment for the new source.

"Facility or activity" means any VSMP point source or treatment works treating domestic sewage or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the VSMP program.

"Flooding" means a volume of water that is too great to be confined within the banks or walls of the stream, water body or conveyance system and that overflows onto adjacent lands, causing or threatening damage.

"General permit" means a VSMP permit authorizing a category of discharges under the CWA and the Act within a geographical area.

Working Draft for Part I, II, III and XIII of the Stormwater Regulations

Thursday, December 21, 2006

~~"Grassed swale" means an earthen conveyance system which is broad and shallow with erosion resistant grasses and check dams, engineered to remove pollutants from stormwater runoff by filtration through grass and infiltration into the soil.~~

"Hazardous substance" means any substance designated under the Code of Virginia and 40 CFR Part 116 (2000) pursuant to §311 of the CWA.

"Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of stormwater, except discharges pursuant to a VPDES or VSMP permit (other than the VSMP permit for discharges from the municipal separate storm sewer), discharges resulting from fire fighting activities, and discharges identified by and in compliance with 4VAC50-60-1220 C 2.

"Impervious cover" means a surface composed of any material that significantly impedes or prevents natural infiltration of water into soil. Impervious surfaces include, but are not limited to, roofs, buildings, streets, parking areas, and any concrete, asphalt, or compacted gravel surface.

"Incorporated place" means a city, town, township, or village that is incorporated under the Code of Virginia.

"Indian country" means (i) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; (ii) all dependent Indian communities with the borders of the United States whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of a state; and (iii) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

"Individual control strategy" means a final VSMP permit with supporting documentation showing that effluent limits are consistent with an approved wasteload allocation or other documentation that shows that applicable water quality standards will be met not later than three years after the individual control strategy is established.

~~"Infiltration facility" means a stormwater management facility that temporarily impounds runoff and discharges it via infiltration through the surrounding soil. While an infiltration facility may also be equipped with an outlet structure to discharge impounded runoff, such discharge is normally reserved for overflow and other emergency conditions. Since an infiltration facility impounds runoff only temporarily, it is normally dry during nonrainfall periods. Infiltration basin, infiltration trench, infiltration dry well, and porous pavement shall be considered infiltration facilities.~~

"Inspection" means an on-site review of the project's compliance with the permit, the local stormwater management program, and any applicable design criteria, or an on-site review to obtain information or conduct surveys or investigations necessary in the enforcement of the Act and this chapter.

"Interstate agency" means an agency of two or more states established by or under an agreement or compact approved by Congress, or any other agency of two or more states having substantial powers or duties pertaining to the control of pollution as determined and approved by the administrator under the CWA and regulations.

"Karst features" means sinkholes, sinking and losing streams, caves, large flow springs, and other such landscape features found in karst areas.

"Land disturbance" or "land-disturbing activity" means a manmade change to the land surface that potentially changes its runoff characteristics including any clearing, grading, or

Working Draft for Part I, II, III and XIII of the Stormwater Regulations

Thursday, December 21, 2006

excavation associated with a construction activity regulated pursuant to the federal Clean Water Act, the Act, and this chapter.

"Large construction activity" means construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Large construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more.

"Large municipal separate storm sewer system" means all municipal separate storm sewers that are either:

1. Located in an incorporated place with a population of 250,000 or more as determined by the latest decennial census by the Bureau of Census (40 CFR Part 122 Appendix F (2000));
2. Located in the counties listed in 40 CFR Part 122 Appendix H (2000), except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties;

3. Owned or operated by a municipality other than those described in subdivision 1 or 2 of this definition and that are designated by the board as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under subdivision 1 or 2 of this definition. In making this determination the board may consider the following factors:

- a. Physical interconnections between the municipal separate storm sewers;
- b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in subdivision 1 of this definition;
- c. The quantity and nature of pollutants discharged to surface waters;
- d. The nature of the receiving waters; and
- e. Other relevant factors.

4. The board may, upon petition, designate as a large municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a stormwater management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in this definition.

"Linear development project" means a land-disturbing activity that is linear in nature such as, but not limited to, (i) the construction of electric and telephone utility lines, and natural gas pipelines; (ii) construction of tracks, rights-of-way, bridges, communication facilities and other related structures of a railroad company; and (iii) highway construction projects. A stream restoration project shall not be considered a linear development project.

"Local stormwater management program" or "local program" means a statement of the various methods employed by a locality or the Department to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, permit requirements, policies and guidelines, technical materials, plan review, inspection, enforcement, and evaluation consistent with the Act and this chapter. The ordinance shall include provisions to require the control of after-development stormwater runoff rate of flow, the proper maintenance of stormwater management facilities, and minimum administrative procedures.

"Locality" means a county, city, or town.

"Low Impact Development" or "LID" means a design strategy with the goal of maintaining or replicating the pre-development hydrologic regime through the use of design techniques to create a functionally equivalent hydrologic site design. Hydrologic functions of storage, infiltration and ground water recharge, as well as the volume and frequency of

Working Draft for Part I, II, III and XIII of the Stormwater Regulations

Thursday, December 21, 2006

discharges are maintained through the use of integrated and distributed micro-scale stormwater retention and detention areas, reduction of impervious surfaces, and the lengthening of runoff flow paths and flow time. Other strategies include the preservation/protection of environmentally sensitive site features such as riparian buffers, wetlands, steep slopes, valuable (mature) trees, flood plains, woodlands, and highly permeable soils.

"Major facility" means any VSMP facility or activity classified as such by the regional administrator in conjunction with the board.

"Major modification" means, for the purposes of this chapter, the modification or amendment of an existing permit before its expiration that is not a minor modification as defined in this regulation.

"Major municipal separate storm sewer outfall (or major outfall)" means a municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or more or its equivalent (discharge from a single conveyance other than circular pipe which is associated with a drainage area of more than 50 acres); or for municipal separate storm sewers that receive stormwater from lands zoned for industrial activity (based on comprehensive zoning plans or the equivalent), with an outfall that discharges from a single pipe with an inside diameter of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated with a drainage area of two acres or more).

"Manmade" means constructed by man.

"Maximum daily discharge limitation" means the highest allowable daily discharge.

"Maximum extent practicable" or "MEP" means a level of implementing stormwater practices and programs which achieve pollutant reductions and take into account the best available technology, cost effectiveness and other competing issues such as human safety and welfare, endangered and threatened resources, water quality and quantity, and geographic features. MEP is achieved, in part, by selecting and implementing effective BMPs and rejecting applicable BMPs only when the BMPs would not be technically feasible or the cost would be prohibitive and unreasonable. MEP is a dynamic performance standard, which evolves over time as urban runoff management knowledge increases. MEP allows flexibility in the way to meet the performance standards and may vary based on the performance standard and site conditions. A stormwater management program must continually be assessed and modified to incorporate improved programs, control measures, best management practices (BMPs), etc. This continual assessment, revision, and improvement of the stormwater management program is expected to ultimately achieve compliance with water quality standards.

"Medium municipal separate storm sewer system" means all municipal separate storm sewers that are either:

1. Located in an incorporated place with a population of 100,000 or more but less than 250,000 as determined by the latest decennial census by the Bureau of Census (40 CFR Part 122 Appendix G (2000));

2. Located in the counties listed in 40 CFR Part 122 Appendix I (2000), except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties;

3. Owned or operated by a municipality other than those described in subdivision 1 or 2 of this definition and that are designated by the board as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described

Working Draft for Part I, II, III and XIII of the Stormwater Regulations

Thursday, December 21, 2006

under subdivision 1 or 2 of this definition. In making this determination the board may consider the following factors:

- a. Physical interconnections between the municipal separate storm sewers;
- b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in subdivision 1 of this definition;
- c. The quantity and nature of pollutants discharged to surface waters;
- d. The nature of the receiving waters; or
- e. Other relevant factors.

4. The board may, upon petition, designate as a medium municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a stormwater management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in subdivisions 1, 2 and 3 of this definition.

"Minor modification" means, for the purposes of this chapter, minor modification or amendment of an existing permit before its expiration as specified in 4VAC50-60-640. Minor modification for the purposes of this chapter also means other modifications and amendments not requiring extensive review and evaluation including, but not limited to, changes in EPA promulgated test protocols, increasing monitoring frequency requirements, changes in sampling locations, and changes to compliance dates within the overall compliance schedules. A minor permit modification or amendment does not substantially alter permit conditions, substantially increase or decrease the amount of surface water impacts, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

"Municipal separate storm sewer" means a conveyance or system of conveyances otherwise known as a municipal separate storm sewer system, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains:

1. Owned or operated by a federal, state, city, town, county, district, association, or other public body, created by or pursuant to state law, having jurisdiction or delegated authority for erosion and sediment control and stormwater management, or a designated and approved management agency under §208 of the CWA that discharges to surface waters;
2. Designed or used for collecting or conveying stormwater;
3. That is not a combined sewer; and
4. That is not part of a publicly owned treatment works.

"Municipal separate storm sewer system" or "MS4" means all separate storm sewers that are defined as "large" or "medium" or "small" municipal separate storm sewer systems or designated under 4VAC50-60-380 A 1.

"Municipal Separate Storm Sewer System Management Program" means a management program covering the duration of a permit for a municipal separate storm sewer system that includes a comprehensive planning process that involves public participation and intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable, using management practices, control techniques, and system, design and engineering methods, and such other provisions that are appropriate.

"Municipality" means a city, town, county, district, association, or other public body created by or under state law and having jurisdiction over disposal of sewage, industrial wastes,

Working Draft for Part I, II, III and XIII of the Stormwater Regulations

Thursday, December 21, 2006

or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under §208 of the CWA.

"National Pollutant Discharge Elimination System (NPDES)" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under §§307, 402, 318, and 405 of the CWA. The term includes an approved program.

"New discharger" means any building, structure, facility, or installation:

1. From which there is or may be a discharge of pollutants;
2. That did not commence the discharge of pollutants at a particular site prior to August 13, 1979;
3. Which is not a new source; and
4. Which has never received a finally effective VPDES or VSMP permit for discharges at that site.

This definition includes an indirect discharger that commences discharging into surface waters after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a site for which it does not have a permit; and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979.

"New permit" means, for the purposes of this chapter, a permit issued by the permit-issuing authority to a permit applicant that does not currently hold and has never held a permit of that type, for that activity, at that location.

"New source," means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

1. After promulgation of standards of performance under §306 of the CWA that are applicable to such source; or
2. After proposal of standards of performance in accordance with §306 of the CWA that are applicable to such source, but only if the standards are promulgated in accordance with §306 of the CWA within 120 days of their proposal.

"Nonpoint source pollution" means pollution such as sediment, nitrogen and phosphorous, hydrocarbons, heavy metals, and toxics whose sources cannot be pinpointed but rather are washed from the land surface in a diffuse manner by stormwater runoff.

"Nonpoint source pollutant runoff load" or "pollutant discharge" means the average amount of a particular pollutant measured in pounds per year, delivered in a diffuse manner by stormwater runoff.

"Operator" means the owner or operator of any facility or activity subject to regulation under the VSMP program. In the context of stormwater associated with a large or small construction activity, operator means any person associated with a construction project that meets either of the following two criteria: (i) the person has direct operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications or (ii) the person has day-to-day operational control of those activities at a project that are necessary to ensure compliance with a stormwater pollution prevention plan for the site or other permit conditions (i.e., they are authorized to direct workers at a site to carry out activities required by the stormwater pollution prevention plan or comply with other permit conditions).

Working Draft for Part I, II, III and XIII of the Stormwater Regulations

Thursday, December 21, 2006

"Outfall" means, when used in reference to municipal separate storm sewers, a point source at the point where a municipal separate storm sewer discharges to surface waters and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other surface waters and are used to convey surface waters.

"Overburden" means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally occurring surface materials that are not disturbed by mining operations.

"Owner" means the Commonwealth or any of its political subdivisions including, but not limited to, sanitation district commissions and authorities, and any public or private institution, corporation, association, firm or company organized or existing under the laws of this or any other state or country, or any officer or agency of the United States, or any person or group of persons acting individually or as a group that owns, operates, charters, rents, or otherwise exercises control over or is responsible for any actual or potential discharge of sewage, industrial wastes, or other wastes to state waters, or any facility or operation that has the capability to alter the physical, chemical, or biological properties of state waters in contravention of §62.1-44.5 of the Code of Virginia, the Act and this chapter.

"Percent impervious" means the impervious area within the site divided by the area of the site multiplied by 100.

"Permit" means an approval issued by the permit-issuing authority for the initiation of a land-disturbing activity or for stormwater discharges from an MS4. Permit does not include any permit that has not yet been the subject of final permit-issuing authority action, such as a draft permit or a proposed permit.

"Permit-issuing authority" means the board, the department, or a locality that is delegated authority by the board to issue, deny, revoke, terminate, or amend stormwater permits under the provisions of the Act and this chapter.

"Permittee" means the person or locality to which the permit is issued, including any operator whose construction site is covered under a construction general permit.

"Person" means any individual, corporation partnership, ~~firm, association, joint venture, public or private or municipal corporation, trust, estate, state, municipality, commission, board, public or private institution, utility, cooperative, county, city, town or other political subdivision of the Commonwealth, any a state, governmental body, any interstate or governmental body or~~ any other legal entity.

"Planning area" means a designated portion of the parcel on which the land development project is located. Planning areas shall be established by delineation on a master plan. Once established, planning areas shall be applied consistently for all future projects.

"Point source" means any discernible, confined, and discrete conveyance including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.

"Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC §2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

Working Draft for Part I, II, III and XIII of the Stormwater Regulations

Thursday, December 21, 2006

1. Sewage from vessels; or

2. Water, gas, or other material that is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well if the well used either to facilitate production or for disposal purposes is approved by the board and if the board determines that the injection or disposal will not result in the degradation of ground or surface water resources.

"Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the State Water Control Board, are "pollution" for the terms and purposes of this chapter.

"Post-development" refers to conditions that reasonably may be expected or anticipated to exist after completion of the land development activity on a specific site or tract of land.

"Pre-development" or "pre-existing" refers to the conditions that exist at the time that plans for the land development of a tract of land are approved by the plan approval authority. Where phased development or plan approval occurs (preliminary grading, roads and utilities, etc.), the existing conditions at the time prior to the first item being approved or permitted shall establish pre-development conditions.

"Prior developed lands" means land that has been previously disturbed for development.

"Privately owned treatment works (PVOTW)" means any device or system that is (i) used to treat wastes from any facility whose operator is not the operator of the treatment works and (ii) not a POTW.

"Proposed permit" means a VSMP permit prepared after the close of the public comment period (and, when applicable, any public hearing and administrative appeals) that is sent to EPA for review before final issuance. A proposed permit is not a draft permit.

"Publicly owned treatment works (POTW)" means a treatment works as defined by §212 of the CWA that is owned by a state or municipality (as defined by §502(4) of the CWA). This definition includes any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW treatment plant. The term also means the municipality as defined in §502(4) of the CWA, that has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

"Recommencing discharger" means a source that recommences discharge after terminating operations.

"Regional administrator" means the Regional Administrator of Region III of the Environmental Protection Agency or the authorized representative of the regional administrator.

"Regional (watershed-wide) stormwater management facility" or "regional facility" means a facility or series of facilities designed to control stormwater runoff from a specific watershed, although only portions of the watershed may experience land development.

Working Draft for Part I, II, III and XIII of the Stormwater Regulations

Thursday, December 21, 2006

"Regional (watershed-wide) stormwater management plan" or "regional plan" means a document containing material describing how runoff from open space, existing development and future planned development areas within a watershed will be controlled by coordinated design and implementation of regional stormwater management facilities.

"Revoked permit" means, for the purposes of this chapter, an existing permit that is terminated by the board before its expiration.

"Riparian buffer" means an area of trees, shrubs, grasses, or a combination thereof, that is (i) at least thirty-five feet in width, (ii) adjacent to state waters, and (iii) managed to maintain the integrity of stream channels and shorelines and (iv) reduces the effects of upland sources of pollution through the infiltration of runoff and filtering of pollutants. A managed lawn adjacent to state waters does not constitute a riparian buffer. The riparian buffer is measured landward (horizontal distance) from the stream bank on both sides of the stream.

"Runoff coefficient" means the fraction of total rainfall that will appear at a conveyance as runoff.

"Runoff" or "stormwater runoff" means that portion of precipitation that is discharged across the land surface or through conveyances to one or more waterways.

"Runoff characteristics" means the parameters of stormwater that address but are not limited to velocity, peak flow rate, volume, time of concentration, sinuosity, channel cross-sectional area, and channel slope.

~~"Sand filter" means a contained bed of sand that acts to filter the first flush of runoff. The runoff is then collected beneath the sand bed and conveyed to an adequate discharge point or infiltrated into the in situ soils.~~

"Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the Act, the CWA and regulations.

"Secretary" means the Secretary of the Army, acting through the Chief of Engineers.

"Severe property damage" means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

~~"Shallow marsh" means a zone within a stormwater extended detention basin that exists from the surface of the normal pool to a depth of six to 18 inches, and has a large surface area and, therefore, requires a reliable source of baseflow, groundwater supply, or a sizeable drainage area, to maintain the desired water surface elevations to support emergent vegetation.~~

"Significant materials" means, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under §101(14) of CERCLA (42 USC §9601(14)); any chemical the facility is required to report pursuant to §313 of Title III of SARA (42 USC §11023); fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with stormwater discharges.

"Single jurisdiction" means, for the purposes of this chapter, a single county or city. The term county includes incorporated towns which are part of the county.

"Site" means the land or water area where any facility or activity is physically located or conducted, a parcel of land being developed, or a designated planning area in which the land development project is located.

Working Draft for Part I, II, III and XIII of the Stormwater Regulations

Thursday, December 21, 2006

501 "Site hydrology" means the parameters that impact the movement of water on and off the
502 site, including but not limited to characteristics such as soil types, soil permeability, vegetative
503 cover, seasonal water tables, and slopes.

504 "Small construction activity" means:

505 1. Construction activities including clearing, grading, and excavating that results in land
506 disturbance of equal to or greater than one acre, or equal to or greater than 2,500 square feet in
507 all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area
508 Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation
509 Act, and less than five acres. Small construction activity also includes the disturbance of less
510 than one acre of total land area that is part of a larger common plan of development or sale if the
511 larger common plan will ultimately disturb equal to or greater than one and less than five acres.
512 Small construction activity does not include routine maintenance that is performed to maintain
513 the original line and grade, hydraulic capacity, or original purpose of the facility. The board may
514 waive the otherwise applicable requirements in a general permit for a stormwater discharge from
515 construction activities that disturb less than five acres where stormwater controls are not needed
516 based on a "total maximum daily load" (TMDL) approved or established by EPA that addresses
517 the pollutant(s) of concern or, for nonimpaired waters that do not require TMDLs, an equivalent
518 analysis that determines allocations for small construction sites for the pollutant(s) of concern or
519 that determines that such allocations are not needed to protect water quality based on
520 consideration of existing in-stream concentrations, expected growth in pollutant contributions
521 from all sources, and a margin of safety. For the purpose of this subdivision, the pollutant(s) of
522 concern include sediment or a parameter that addresses sediment (such as total suspended solids,
523 turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of
524 any water body that will receive a discharge from the construction activity. The operator must
525 certify to the board that the construction activity will take place, and stormwater discharges will
526 occur, within the drainage area addressed by the TMDL or equivalent analysis.

527 2. Any other construction activity designated by the either the board or the EPA regional
528 administrator, based on the potential for contribution to a violation of a water quality standard or
529 for significant contribution of pollutants to surface waters.

530 "Small municipal separate storm sewer system" or "small MS4" means all separate storm
531 sewers that are (i) owned or operated by the United States, a state, city, town, borough, county,
532 parish, district, association, or other public body (created by or pursuant to state law) having
533 jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including
534 special districts under state law such as a sewer district, flood control district or drainage district,
535 or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated
536 and approved management agency under §208 of the CWA that discharges to surface waters and
537 (ii) not defined as "large" or "medium" municipal separate storm sewer systems or designated
538 under 4VAC50-60-380 A 1. This term includes systems similar to separate storm sewer systems
539 in municipalities, such as systems at military bases, large hospital or prison complexes, and
540 highway and other thoroughfares. The term does not include separate storm sewers in very
541 discrete areas, such as individual buildings.

542 "Source" means any building, structure, facility, or installation from which there is or
543 may be a discharge of pollutants.

544 "State" means the Commonwealth of Virginia.

Working Draft for Part I, II, III and XIII of the Stormwater Regulations

Thursday, December 21, 2006

"State/EPA agreement" means an agreement between the regional administrator and the state that coordinates EPA and state activities, responsibilities and programs including those under the CWA and the Act.

"State project" means any land development project that is undertaken by any state agency, board, commission, authority or any branch of state government, including state-supported institutions of higher learning.

"State Water Control Law" means Chapter 3.1 (§62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia.

"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

"Stormwater" means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage.

~~"Stormwater detention basin" or "detention basin" means a stormwater management facility that temporarily impounds runoff and discharges it through a hydraulic outlet structure to a downstream conveyance system. While a certain amount of outflow may also occur via infiltration through the surrounding soil, such amounts are negligible when compared to the outlet structure discharge rates and are, therefore, not considered in the facility's design. Since a detention facility impounds runoff only temporarily, it is normally dry during nonrainfall periods.~~

"Stormwater discharge associated with construction activity" means a discharge of pollutants in stormwater runoff from areas where land-disturbing activities (e.g., clearing, grading, or excavation); construction materials or equipment storage or maintenance (e.g., fill piles, borrow area, concrete truck washout, fueling); or other industrial stormwater directly related to the construction process (e.g., concrete or asphalt batch plants) are located.

"Stormwater discharge associated with large construction activity" means the discharge of stormwater from large construction activities.

"Stormwater discharge associated with small construction activity" means the discharge of stormwater from small construction activities.

~~"Stormwater extended detention basin" or "extended detention basin" means a stormwater management facility that temporarily impounds runoff and discharges it through a hydraulic outlet structure over a specified period of time to a downstream conveyance system for the purpose of water quality enhancement or stream channel erosion control. While a certain amount of outflow may also occur via infiltration through the surrounding soil, such amounts are negligible when compared to the outlet structure discharge rates and, therefore, are not considered in the facility's design. Since an extended detention basin impounds runoff only temporarily, it is normally dry during nonrainfall periods.~~

~~"Stormwater extended detention basin enhanced" or "extended detention basin enhanced" means an extended detention basin modified to increase pollutant removal by providing a shallow marsh in the lower stage of the basin.~~

"Stormwater management facility" means a device that controls stormwater runoff and changes the characteristics of that runoff including, but not limited to, the quantity and quality, the period of release or the velocity of flow.

"Stormwater management plan" means a document containing material for describing how existing runoff characteristics will be maintained by a land-disturbing activity and methods for complying with the requirements of the local program or this chapter.

Working Draft for Part I, II, III and XIII of the Stormwater Regulations

Thursday, December 21, 2006

"Stormwater Management Program" means a program established by a locality that is consistent with the requirements of the Virginia Stormwater Management Act, this chapter and associated guidance documents.

"Stormwater management standards" means the minimum standards of effectiveness for every stormwater management program and land-disturbing activity as setout in Part II of these regulations.

"Stormwater Pollution Prevention Plan" (SWPPP) or "plan" means a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollution that may reasonably be expected to affect the quality of stormwater discharges from the construction site or its associated land-disturbing activities. In addition the document shall describe and ensure the implementation of best management practices, and shall include, but not be limited to the inclusion of, or the incorporation by reference of, an erosion and sediment control plan, a post-construction stormwater management plan, a spill prevention control and countermeasure (SPCC) plan, and other practices that will be used to reduce pollutants in stormwater discharges from land-disturbing activities and to assure compliance with the terms and conditions of this chapter. All plans incorporated by reference into the SWPPP shall be enforceable under the permit issued.

~~"Stormwater retention basin" or "retention basin" means a stormwater management facility that includes a permanent impoundment, or normal pool of water, for the purpose of enhancing water quality and, therefore, is normally wet, even during nonrainfall periods. Storm runoff inflows may be temporarily stored above this permanent impoundment for the purpose of reducing flooding, or stream channel erosion.~~

~~"Stormwater retention basin I" or "retention basin I" means a retention basin with the volume of the permanent pool equal to three times the water quality volume.~~

~~"Stormwater retention basin II" or "retention basin II" means a retention basin with the volume of the permanent pool equal to four times the water quality volume.~~

~~"Stormwater retention basin III" or "retention basin III" means a retention basin with the volume of the permanent pool equal to four times the water quality volume with the addition of an aquatic bench.~~

"Subdivision" means the same as defined in §15.2-2201 of the Code of Virginia.

"Surface waters" means:

1. All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;

2. All interstate waters, including interstate wetlands;

3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

a. That are or could be used by interstate or foreign travelers for recreational or other purposes;

b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

c. That are used or could be used for industrial purposes by industries in interstate commerce.

4. All impoundments of waters otherwise defined as surface waters under this definition;

Working Draft for Part I, II, III and XIII of the Stormwater Regulations

Thursday, December 21, 2006

5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;
6. The territorial sea; and
7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subdivisions 1 through 6 of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA and the law, are not surface waters. Surface waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other agency, for the purposes of the Clean Water Act, the final authority regarding the Clean Water Act jurisdiction remains with the EPA.

"Total dissolved solids" means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136 (2000).

"Toxic pollutant" means any pollutant listed as toxic under §307(a)(1) of the CWA or, in the case of sludge use or disposal practices, any pollutant identified in regulations implementing §405(d) of the CWA.

"Undeveloped land" means land that has not been previously disturbed for development.

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

"Variance" means any mechanism or provision under §301 or §316 of the CWA or under 40 CFR Part 125 (2000), or in the applicable effluent limitations guidelines that allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of the CWA. This includes provisions that allow the establishment of alternative limitations based on fundamentally different factors or on §301(c), §301(g), §301(h), §301(i), or §316(a) of the CWA.

~~"Vegetated filter strip" means a densely vegetated section of land engineered to accept runoff as overland sheet flow from upstream development. It shall adopt any natural vegetated form, from grassy meadow to small forest. The vegetative cover facilitates pollutant removal through filtration, sediment deposition, infiltration and absorption, and is dedicated for that purpose.~~

"Virginia Pollutant Discharge Elimination System (VPDES) permit" or "VPDES permit" means a document issued by the State Water Control Board pursuant to the State Water Control Law authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters and the use or disposal of sewage sludge.

"Virginia Stormwater Management Act" or "Act" means Article 1.1 (§ 10.1-603.1 et seq.) of Chapter 6 of Title 10.1 of the Code of Virginia.

"Virginia Stormwater Management Program (VSMP)" means the Virginia program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing requirements pursuant to the federal Clean Water Act, the Virginia Stormwater Management Act, this chapter, and associated guidance documents.

"Virginia Stormwater Management Program (VSMP) permit" means a document issued by the permit-issuing authority pursuant to the Virginia Stormwater Management Act and this chapter authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters. Under the approved state program, a VSMP permit is equivalent to a NPDES permit.

Working Draft for Part I, II, III and XIII of the Stormwater Regulations

Thursday, December 21, 2006

"VSMP application" or "application" means the standard form or forms, including any additions, revisions or modifications to the forms, approved by the administrator and the board for applying for a VSMP permit.

"Water quality volume" means the volume equal to the first 1/2 inch of runoff multiplied by the impervious surface of the land development project.

"Watershed" means a defined land area drained by a river or stream, karst system, or system of connecting rivers or streams such that all surface water within the area flows through a single outlet. In karst areas, the karst feature to which the water drains may be considered the single outlet for the watershed.

"Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

"Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly by a toxicity test.

4VAC50-60-20. Purposes.

The purposes of this chapter are to provide a framework for the administration, implementation and enforcement of the Act and to delineate the procedures and requirements to be followed in connection with VSMP permits issued by the ~~board~~ Board or its designee pursuant to the Clean Water Act and the Virginia Stormwater Management Act, while at the same time providing flexibility for innovative solutions to stormwater management issues. The chapter shall also establish local program delegation procedures by the Board, Board and Department oversight authorities for locally administered programs, Department local program administration procedures as a program implementer for non-opt-in localities, and the components of a stormwater management program including but not limited to stormwater management standards.

4VAC50-60-30. Applicability.

This chapter is applicable to:

1. Every private, local, state, or federal entity that establishes a stormwater management program;

2. The Department in its oversight of locally delegated programs or in its administration of a local program;

~~3.~~ 3. Every state agency project regulated under the Act and this chapter; and

~~4.~~ 4. Every land-disturbing activity regulated under § 10.1-603.8 of the Code of Virginia unless otherwise exempted in 10.1-603.8 B.

Part II Stormwater Management Program Technical Criteria

4VAC50-60-40. Authority and applicability.

~~This part specifies technical criteria for every stormwater management program and land-disturbing activity.~~

Pursuant to the Virginia Stormwater Management Law, § 10.1-603.2 et seq. of the Code of Virginia, the Board is required to take actions ensuring the general health, safety and welfare of the citizens of the Commonwealth as well as protecting the quality and quantity of state waters

Working Draft for Part I, II, III and XIII of the Stormwater Regulations

Thursday, December 21, 2006

from the potential harm of unmanaged stormwater. In addition to other authority granted to the Board under the Stormwater Management Law, the Board is authorized pursuant to §§ 10.1-603.2:1 and 10.1-603.4 to adopt regulations that specify minimum technical criteria for stormwater management programs in Virginia, to establish statewide standards for stormwater management from land disturbing activities, and to protect properties, water quality, stream channels, and other natural resources.

In accordance with the Board's authority, this part establishes the minimum technical criteria and stormwater management standards that shall be employed by a delegated or state-administered local stormwater management program to protect the quality and quantity of state waters from the potential harm of unmanaged stormwater runoff resulting from land disturbing activities.

4VAC50-60-50. General. Repeal

4VAC50-60-53. General Requirements

The natural, physical, chemical, biological and hydrologic characteristics and the water quality and quantity of the receiving state waters shall be maintained, protected, or improved in accordance with these regulations and include but are not limited to supporting state designated uses and water quality standards.

4VAC50-60-56. Applicability of other laws and regulations

Land disturbing activities shall comply with all applicable laws and regulations related to stormwater management, including but not limited to the Virginia Stormwater Management Law, Virginia Erosion and Sediment Control Law and the Chesapeake Bay Preservation Act except as provided in § 10.1-603.3 subsection I and all applicable regulations adopted in accordance with those laws. Nothing in this chapter shall be construed as limiting the rights of other federal and state agencies from imposing stricter technical criteria or other requirements as allowed by law.

4VAC50-60-60. Water quality. Repeal

4VAC50-60-63. Water Quality

In order to protect the quality of state waters and to control nonpoint source pollution, a local program shall apply the following minimum technical criteria and statewide standards for stormwater management to land disturbing activities:

A. Pursuant to §10.1-603.4, the Board is authorized to establish minimum design criteria for measures to control nonpoint source pollution. In order to address periodic modifications due to continuing advances in types of control measures and engineering methods, such design criteria guidance is referenced in the Virginia Stormwater Management Handbook. In requiring the implementation of such control measures of the land disturbing activity on the development site, a local program shall, at a minimum, incorporate the following technical criteria and stormwater management standards:

1. A local program shall require new development to implement control measures with minimum design criteria such that the post-development pollutant load of the development site shall not exceed 0.28 pounds of total phosphorus per acre per year and 2.68 pounds of total nitrogen per acre per year.

Working Draft for Part I, II, III and XIII of the Stormwater Regulations

Thursday, December 21, 2006

2. A local program shall require that projects occurring on prior developed lands achieve at least a 44% reduction in total phosphorous load and at least a 28% reduction in total nitrogen load from pre-existing conditions. The post-development pollutant load for projects occurring on prior developed lands shall not be required to be reduced to less than 0.28 pounds of total phosphorous per acre per year and 2.68 pounds of total nitrogen per acre per year.

3. Total nitrogen load and total phosphorus load shall be calculated using methodologies provided in the Virginia Stormwater Management Handbook.

4. In addition to the above requirements, if a land disturbing activity discharges stormwater to a segment of a state water that has been designated as impaired by the 303(d) Impaired Waters List and a TMDL for that segment has been established and approved by the United States Environmental Protection Agency, a local program shall require that additional control measures be implemented as necessary to achieve the goals of the TMDL implementation plan to the maximum extent practicable.

B. If the local program allows for offsite controls, and if the applicant demonstrates to the satisfaction of the local program authority that post-development pollutant load water quality technical criteria set out in subsection A cannot be achieved onsite, offsite controls may be considered to achieve the necessary reduction per the following:

1. Unless addressed through a comprehensive stormwater management plan, new development pollutant loads shall not exceed 0.37 pounds of total phosphorus per acre per year and 3.5 pounds of total nitrogen per acre per year through onsite controls. Projects occurring on prior developed lands shall at a minimum achieve a 33% reduction in total phosphorous load and 21% reduction in total nitrogen load from pre-existing conditions through onsite controls.

2. Once the minimum onsite phosphorus and nitrogen load and reduction criteria set out in subsection B1 have been met, offsite practices acceptable to the local program authority shall be utilized to meet the remaining required pollutant load reductions for the development or redevelopment project. The offsite reductions shall be achieved within the same Hydrologic Unit Code or the adjacent downstream Hydrologic Unit Code per guidance provided in the Virginia Stormwater Management Handbook.

3. If the local program allows for a pro rata fee in accordance with §15.2-2243, and if the applicant has demonstrated to the satisfaction of the local program authority that the criteria set out in subsection B2 cannot be met, then the remaining load reductions shall be achieved by a payment of a pro rata fee deposited in a non-reverting Stormwater Mitigation fund established by the local program for the restricted purpose of achieving the required load reductions pursuant to a Board approved plan and schedule.

C. A local stormwater management program shall encourage the reduction of impervious cover and the implementation of LID in achieving the technical criteria set forth in subsection A. The reductions achieved by LID measures shall be calculated per the guidance provided in the Virginia Stormwater Management Handbook.

4VAC 50-60-66 Water Quantity

In order to protect state waters from the potential harms of unmanaged quantities of stormwater runoff, the following technical criteria and statewide standards for stormwater management shall apply to land disturbing activities:

A. Properties and state waters receiving stormwater runoff from any land-disturbing activity shall be protected from sediment deposition, erosion and damage due to changes in runoff rate of flow and hydrologic characteristics, including but not limited to, changes in

Working Draft for Part I, II, III and XIII of the Stormwater Regulations

Thursday, December 21, 2006

821 volume, velocity, frequency, duration, and peak flow rate of stormwater runoff in accordance
822 with the minimum water quantity standards set out in this section and the guidance found in the
823 Virginia Stormwater Management Handbook.

824 B. Pursuant to §10.1-603.4:7, a local program shall require that land disturbing activities:

825 1. Maintain post-development runoff rate of flow and runoff characteristics that replicate,
826 as nearly as practicable, the existing predevelopment runoff characteristics and site hydrology, or
827 2. If stream channel erosion or localized flooding is an existing predevelopment condition,
828 the proposed land disturbing activity shall improve to the maximum extent practicable upon the
829 contributing share of the existing predevelopment runoff characteristics and site hydrology per
830 guidance found in the Virginia Stormwater Management Handbook.

831 C. Any land disturbing activity shall satisfy the requirements of subsection B above if the
832 practices implemented on the site are designed to:

833 1. Detain the water quality volume and to release it over 48 hours;
834 2. Detain and release over a 24-hour period the expected rainfall resulting from the one
835 year, 24 hour storm; and
836 3. Reduce the allowable peak flow rate resulting from the 1.5, 2, and 10-year, 24-hour
837 storms to a level that is less than or equal to the peak flow rate from the site assuming that it was
838 in good forested condition, achieved through multiplication of the forested peak flow rate by a
839 reduction factor that is equal to the runoff volume from the site when it was in a good forested
840 condition divided by the runoff volume from the site in its proposed condition.

841 Such land disturbing activity shall further be exempt from any flow rate capacity and
842 velocity requirements for natural or manmade channels as defined in any other section of this
843 regulation.

844 D. For the purposes of determining compliance with subsection B, a local program shall
845 require the following:

846 1. Pre-development stream characteristics shall be verified by physical surveys,
847 geotechnical investigations, and calculations that are consistent with good engineering practices
848 that are acceptable to the local program authority.

849 2. Flooding and channel erosion impacts to receiving streams due to land-disturbing
850 activities shall be calculated for each point of discharge from the land disturbance and such
851 calculations shall include any runoff from the balance of the watershed which also contributes to
852 that point of discharge. Flooding and channel erosion impacts shall be evaluated taking the
853 entire upstream watershed into account, including the modifications from the planned land
854 disturbance. Good engineering practices and calculations shall be used to demonstrate post
855 development stream characteristics, flooding and channel erosion impacts.

856 3. For purposes of computing predevelopment runoff, all pervious lands in the site shall be
857 assumed prior to development to be in good condition (if the lands are pastures, lawns, or parks),
858 with good cover (if the lands are woods), or with conservation treatment (if the lands are
859 cultivated); regardless of conditions existing at the time of computation. Predevelopment runoff
860 calculations utilizing other land cover values may be utilized provided that it is demonstrated to
861 and approved by the local program authority that actual site conditions warrant such
862 considerations.

863 E. A local stormwater management program shall encourage the reduction of impervious
864 cover and the implementation of LID in achieving water quantity reductions. The reductions
865 achieved by LID measures shall be calculated per the guidance provided in the Virginia
866 Stormwater Management Handbook.

Working Draft for Part I, II, III and XIII of the Stormwater Regulations

Thursday, December 21, 2006

4VAC50-60-70. Stream channel erosion. Repeal

4VAC50-60-73. Design Storms

For the purposes of this chapter, unless otherwise specified, the specified design storms shall be defined as a 2 and 10-year 24-hour storm using the site-specific rainfall distribution recommended by the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS). The permit issuing authority may allow for the use of the Modified Rational (critical storm duration) Method per the guidance provided in the Virginia Stormwater Management Handbook.

4VAC50-60-76. Linear development projects

Linear development projects shall control post-development stormwater runoff in accordance with a stormwater management plan or a comprehensive stormwater management plan developed in accordance with these regulations.

4VAC50-60-80. Flooding. Repeal

4VAC50-60-83. Stormwater management impoundment structures or facilities

A. Construction of stormwater management impoundment structures or facilities within tidal or nontidal wetlands and perennial streams shall be avoided to the maximum extent practicable.

B. Construction of stormwater management impoundment structures or facilities within a Federal Emergency Management Agency (FEMA) designated 100-year floodplain shall be avoided to the maximum extent practicable. When this is demonstrated to be unavoidable, all stormwater management facility construction shall be in compliance with all applicable requirements under the National Flood Insurance Program, 44 CFR Part 59 and local floodplain ordinances.

C. Stormwater management impoundment structures that are not covered by the Impounding Structure Regulations (4VAC50-20) shall be engineered for structural integrity for the 100-year storm event. In no case shall the design standard be less than the 100-year storm event for any stormwater management impoundment structure.

D. Construction of stormwater management impoundment structures or facilities may occur in karst areas only after a geological study of the area has been conducted in accordance with guidelines provided in the Virginia Stormwater Management Handbook.

E. No adverse environmental impacts shall occur to any identified karst features. Permanent stormwater management impoundment structures or facilities shall only be constructed in karst features after completion of a geotechnical investigation in accordance with guidelines provided in the Stormwater Management Handbook. Discharge of stormwater into a karst feature shall not occur unless in accordance with the technical criteria provided in this Part and unless otherwise allowed by law.

4VAC50-60-86. Riparian Buffers

For the purpose of this chapter, a local program shall develop a riparian buffer plan in accordance with the guidance provided in the Virginia Stormwater Management Handbook that includes riparian protection strategies for the maintenance of existing buffers and the

Working Draft for Part I, II, III and XIII of the Stormwater Regulations

Thursday, December 21, 2006

establishment of new buffers. To the maximum extent practicable, such a plan shall require that riparian buffers adjacent to perennial streams or streams whose watershed is greater than 50 acres in size on development and redevelopment sites be maintained during and following the land disturbing activity. If no such riparian buffers are existing at the time of the land disturbing activity, then such plan shall require that riparian buffers be established. The local program riparian buffer plan shall be approved by the Board. The Board may grant an exception to the 35-foot width requirement provided that the local program demonstrates to the satisfaction of the Board that the reduced width will satisfactorily protect water quality and quantity. Nothing in this section shall be interpreted to diminish the applicability of any other state law including the Chesapeake Bay Preservation Act and its attendant regulations and guidance.

4VAC50-60-90. Regional (watershed-wide) stormwater management plans. Repeal

4VAC50-60-93. Stormwater Management Plan Development

A. A stormwater management plan for a land disturbing activity shall apply these stormwater management technical criteria to the entire land disturbing activity.

B. Individual lots or planned phases of developments shall not be considered separate land-disturbing activities, but rather the entire development shall be considered a single land disturbing activity.

C. The stormwater management plan shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff.

4VAC50-60-96. Comprehensive stormwater management plans

A. Localities are encouraged to develop comprehensive stormwater management plans which meet the water quality and quantity requirements of this chapter on a watershed-wide basis. State and federal agencies intending to develop large tracts of land are encouraged to develop or participate in comprehensive stormwater management plans where practicable.

B. The objective of a comprehensive stormwater management plan is to address the stormwater management concerns in a given watershed and to better integrate stormwater management facilities and practices. The implementation of comprehensive stormwater management plans shall mitigate the impacts of new development, and provide for the remediation of erosion, flooding or water quality problems caused by existing development within the given watershed. Such plans do not remove the need to meet the onsite requirements set out in 4 VAC 50-60-63A.

Part IIIA

Local Programs

4VAC50-60-100. Applicability. Repeal

4VAC50-60-110. Technical criteria for local programs. Repeal

4VAC50-60-120. Requirements for local program and ordinance. Repeal

4VAC50-60-130. Administrative procedures: stormwater management plans. Repeal

4VAC50-60-140. Administrative procedures: exceptions. Repeal

4VAC50-60-150. Administrative procedures: maintenance and inspections. Repeal

4VAC50-60-102. Authority and Applicability.

In accordance with the Virginia Stormwater Management Law, §10.1-603.2 et seq., the Board is authorized to delegate to an approved locality the administration of a local stormwater management program. Pursuant to §10.1-603.4, the Board is required to establish standards and procedures for such a delegation. Delegation shall follow the adoption of a local stormwater management program by a locality in accordance with §§10.1-603.3 A or B and the Board's deeming of such program as consistent with the Virginia Stormwater Management Law and these regulations in accordance with §10.1-603.3 F.

This part specifies the minimum technical criteria for a locality administered stormwater management program and the requirements of a local government ordinance regarding a stormwater management program. Such criteria include but are not limited to administrative, plan review, issuance of coverage under the General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Construction Activities, inspection, and enforcement.

4VAC50-60-104. Technical criteria for local programs.

A. All local stormwater management programs shall comply with the provisions of Part II (4VAC50-60-40 et seq.).

B. When a locality operating a delegated local stormwater management program has adopted more stringent requirements or implemented a comprehensive stormwater management plan, the Department shall consider these requirements in its review of state projects within that locality in accordance with Part IV of these regulations (4VAC50-60-160 et seq.).

C. Nothing in this part shall be construed as authorizing a locality to regulate, or to require prior approval by the locality for, a state project.

4VAC50-60-106. Local Program Administrative Requirements.

A. A local stormwater management program shall provide for the following:

1. Identification of the permit issuing authority, the plan approving authority, the inspection authority, and the enforcement authority;

Working Draft for Part I, II, III and XIII of the Stormwater Regulations

Thursday, December 21, 2006

- 993 2. Regulations and technical criteria to be used in the stormwater management program;
994 3. Procedures for the submission and approval of plans;
995 4. Procedures for the issuance, denial, revocation, termination, reissuance, transfer, or
996 modifications of stormwater permits;
997 5. Assessment and collection of fees;
998 6. Inspection and monitoring of land disturbing activities for compliance;
999 7. Procedures for long-term BMP inspection;
1000 8. Enforcement.

1001 B. A locality shall adopt an ordinance that incorporates the components set out in
1002 subsection A.

1003 C. A local program shall report to the Department information related to the
1004 administration and implementation of the local program, in a method and on a time schedule
1005 established by the Department.

1006 D. A local program may require the submission of a reasonable performance bond or
1007 such other financial surety and for the release of such sureties in accordance with the criteria set
1008 forth in §10.1-603.8.

1010 **4VAC50-60-108. Local program stormwater management plan review**

1011 A. A locality shall require new development or redevelopment projects to submit
1012 stormwater management plans for review and approval prior to commencement of the land
1013 disturbing activities.

1014 B. Localities shall approve or disapprove a stormwater management plan according to the
1015 following:

1016 1. Localities shall begin stormwater management plan review upon submission of a
1017 complete plan. A complete plan shall at a minimum include the following elements:

1018 a. Contact Information including the name, address, and telephone number of the
1019 property owner and the operator and the tax reference number and parcel number of the property
1020 or properties affected;

1021 b. A narrative description of the site and proposed stormwater management BMPs and
1022 the mechanism through which the BMPs will be operated and maintained during and after
1023 construction;

1024 c. The location and the design of the proposed stormwater management BMPs;

1025 d. A report identifying the geotechnical properties of the hydrologic and structural
1026 characteristics of soils utilized with the installation of stormwater management BMPs per the
1027 Virginia Stormwater Management Handbook;

1028 e. Overall site plan that identifies the location of receiving state waters and that includes
1029 pre-development and post-development conditions for drainage areas including final drainage
1030 patterns and changes to existing contours;

1031 f. Comprehensive hydrologic and hydraulic computations of the pre-development and
1032 post-development runoff conditions for the required design storms;

1033 g. Good engineering practices and calculations verifying compliance with the water
1034 quality and quantity requirements of this chapter;

1035 h. Inspection schedules, maintenance agreements and sources for funding the
1036 maintenance of all stormwater management BMPs;

1037 i. Right-of-entry agreements or easements from the owner for purposes of inspection and
1038 maintenance;

Working Draft for Part I, II, III and XIII of the Stormwater Regulations

Thursday, December 21, 2006

j. Agreements between the local program and the owner that states where maintenance or repair is neglected, or the stormwater management BMP becomes a danger to public health or safety, the local program has the authority to perform the work and to recover the costs from the owner;

k. All stormwater management plans shall be appropriately sealed and signed by a professional in adherence to all minimum standards and requirements pertaining to the practice of that profession in accordance with Chapter 4 of Title 54.1 of the Code of Virginia and attendant regulations; and

1. The person responsible for the development project shall certify that all land clearing, construction, land development and drainage will be done according to the approved plan.

2. Upon receipt of a plan, the locality shall have 15 calendar days to determine the administrative completeness of the plan and notify the applicant of its determination. If a plan is deemed to be administratively incomplete based on the criteria setout in subsection B1 of this section, the locality must identify in writing the reasons the plan is deemed deficient. If a locality does not make a determination within the 15 calendar days, the plan shall be deemed administratively complete as of the date of submission and a maximum of 45 additional calendar days will be allowed for the review of the plan.

3. Upon the determination that a plan is administratively complete, a maximum of 60 calendar days will be allowed for the review of the plan.

4. During the review period, the locality shall either approve or disapprove the plan and communicate its decision to the person responsible for the development project in writing. If the plan is not approved, the reasons for not approving the plan shall be provided in writing. Approval or denial shall be based on the plan's compliance with the locality's stormwater management program.

5. If a plan meeting all requirements of the local program is submitted and no action is taken by the locality within the time specified above, the plan shall be deemed approved.

C. An initial stormwater management plan may be submitted to a locality, if allowed by the local program, for review and approval when it is accompanied by an approved erosion and sediment control plan and preliminary stormwater design for the current and future site work. Such initial plans shall be limited to the initial clearing and grading of the site. An initial plan does not supercede the need for the submittal and approval of a complete stormwater management plan. The following information in the initial plan shall include, but not be limited to:

1. A map(s) indicating the location of the natural resources and structures at the site and surrounding area as it exists prior to the commencement of the project. This map(s) shall also include an identification of the limits of clearing and grading, existing and proposed drainage patterns, streams, soil types, forest cover, topography, wetlands, and other native vegetative areas on the site. Particular attention should be paid to environmentally sensitive features that provide particular opportunities or constraints for development.

The map(s) may also include proposed buildings, roads, parking areas, utilities, and stormwater management measures. The map(s) may also show proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including but not limited to; planned locations of utilities, roads and easements.

2. A narrative shall accompany such map(s) describing the elements setout in subsection

1. Acreages shall be provided for the overall site, limits of clearing and grading, wetlands, and

Working Draft for Part I, II, III and XIII of the Stormwater Regulations

Thursday, December 21, 2006

riparian areas. Such narrative shall include a description of how the proposed changes would alter the site's natural conditions.

D. Each plan approved by a locality may be changed in accordance with the following:

1. Changes to an approved plan, not based on field inspections, shall be allowed only after the review and written approval of the plan approving authority. The plan approving authority shall have 30 calendar days for the review.

2. If field inspection by the person responsible for the development project shows that a plan is not adequate, modifications to the approved plan may be requested to address noted deficiencies. The plan approving authority shall have 15 calendar days to respond in writing either approving or disapproving such request.

3. The plan approving authority, based on an inspection, may require amendments to the approved plan to address the noted deficiencies and notify the person responsible for the development project of the required modifications.

4VAC50-60-112. Local program issuance of coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities.

A. A locality shall issue coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities in a format determined by the Department and in accordance with the following:

1. The applicant has an approved initial stormwater management plan or an approved stormwater management plan for the land disturbing activity.

2. The applicant has submitted a complete registration statement for the VSMP General Permit for Discharges of Stormwater from Construction Activities and the registration statement has been reviewed and approved by the local program authority.

3. The applicant has submitted the required fee form and fee for the registration statement seeking coverage under the VSMP general permit.

4. Applicants submitting registration statements deemed to be incomplete must be notified within 3 working days that the registration statement is not complete, informed of what material needs to be submitted to complete the registration statement, and that the land disturbing activity does not have VSMP general permit coverage.

B. The locality shall report VSMP general permit coverage information to the Department in accordance with 4VAC50-60-126.

4VAC50-60-114. Local program inspections.

A. A local program shall conduct inspections of stormwater management BMPs during construction to ensure that the location and construction are consistent with the approved plan.

B. A local program shall require the person responsible for the development project to submit an as-built survey, appropriately sealed and signed by a professional in adherence to all minimum standards and requirements pertaining to the practice of that profession in accordance with Chapter 4 of Title 54.1 of the Code of Virginia and attendant regulations, certifying that the stormwater management BMPs have been constructed in accordance with the approved plan. The local program shall inspect the BMPs for compliance with the as-built survey prior to the release of the construction bond.

C. A local program shall require the operator of stormwater management BMPs to conduct inspections in accordance with a recorded inspection schedule and maintenance agreement, or on an annual basis for stormwater management BMPs without a recorded

Working Draft for Part I, II, III and XIII of the Stormwater Regulations

Thursday, December 21, 2006

inspection schedule and maintenance agreement, and provide a written report to the local program administrator.

D. A local program shall inspect stormwater management BMPs on an annual basis or may establish an alternative inspection program which ensures that stormwater management BMPs are functioning as intended. Any alternative inspection program shall be:

1. Approved by the Board prior to implementation;
2. Established in writing;
3. Based on a system of priorities that takes into consideration the purpose and type of the facility, ownership, the contributing drainage area, and downstream conditions;

4. Demonstrated to be an enforceable inspection program conducted by the local program or its designee, not to include the property owner, that meets the intent of the regulations; and

5. Documented by inspection records.

E. Inspection reports shall be generated and kept on file for all stormwater management BMPs inspected by the local program.

F. The operator shall allow a right of entry to the local program or its designee to conduct inspections of the project.

4VAC50-60-116. Local program enforcement.

A. A local program shall incorporate the following components:

1. Informal and formal administrative enforcement procedures including:

a. Verbal warning and inspection reports;

b. Notice of corrective action;

c. Consent special orders and civil charges in accordance with §§ 10.1-603.2:1 7 and 10.1-603.14 D 2;

d. Notice to comply in accordance with § 10.1-603.11;

e. Special orders in accordance with § 10.1-603.2:1 7;

f. Emergency special orders in accordance with § 10.1-603.2:1 7; and

g. Public notice and comment period pursuant to 4 VAC 50-60-660.

2. Civil and criminal judicial enforcement procedures including:

a. Schedule of civil penalties setout in subsection D;

b. Criminal penalties in accordance with § 10.1-603.14 B and C; and

c. Injunctions in accordance with §§ 10.1-603.12:4 and 10.1-603.14 D1

B. A local program shall develop policies and procedures that outline the steps to be taken regarding enforcement actions under the Stormwater Management Act and attendant regulations, and local ordinance.

C. A local program may utilize the Department's Stormwater Management Enforcement Manual as guidance in establishing policies and procedures.

D. Schedule of Civil Penalties set by the Board in accordance with § 10.1-603.14 A. The Board intends that these civil penalties generally be applied after other enforcement remedies have been unsuccessful, in egregious situations, or for repeat offenders.

<u>Violations and Frequency of Occurrence *</u>	<u>Maximum \$\$/occurrence (occur.)/day</u>	<u>Recommended Minimum \$\$/occurrence/day</u>
<u>No Permit Registration</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$10,000/ occur./ day(s)</u>

Working Draft for Part I, II, III and XIII of the Stormwater Regulations

Thursday, December 21, 2006

<u>No Stormwater Pollution Prevention Plan (SWPPP)</u> <u>[No SWPPP components including erosion and sediment (E&S Control Plan)]</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$10,000/ occur./ day(s)</u>
<u>No approved E&S Control Plan</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$10,000/ occur./ day(s)</u>
<u>Failure to install stormwater Best Management Practices (BMPs) or E&S controls**</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$5,000/ occur./ day(s)</u>
<u>Failure to conduct required inspections</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$1,000/ occur./ day(s)</u>
<u>Operational deficiencies (e.g., failure to initiate stabilization measures as soon as practicable; failure to implement control measures for construction debris; incomplete SWPPP; SWPPP not onsite; Stormwater BMPs or erosion and sediment controls improperly installed or maintained; incomplete, improper or missed inspections.)</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$500/ occur./ day(s)</u>

* The frequency of occurrence is a maximum of per day per violation.

** Each BMP and E&S control not installed constitutes a separate violation

E. Pursuant to § 10.1-603.2:1 2, delegation shall not remove from the Board the authority to enforce the provisions of the stormwater management law and attendant regulations.

4VAC50-60-118. Hearings.

A local program shall ensure that any permit applicant or permittee shall have a right to a hearing pursuant to § 10.1-603.12:6 and shall ensure that all hearings held under this Chapter shall be conducted in accordance with § 10.1-603.12:7 or as otherwise provided by law.

4VAC50-60-122. Local program: exceptions.

A. A person may request an exception to the provisions of Part II (4VAC50-60-40 et seq.). A request for an exception shall be submitted, in writing, to the permit issuing authority. An exception may be granted, provided that: (i) the exception is the minimum necessary to afford relief, (ii) reasonable and appropriate conditions shall be imposed as necessary upon any exception granted so that the intent of the Act and this chapter are preserved-, (iii) granting the exception will not confer on the permittee any special privileges that are denied to other permittees who present similar circumstances, and (iv) exception requests are not based upon conditions or circumstances that are self-imposed or self-created.

B. Economic hardship alone is not sufficient reason to grant an exception from the requirements of this chapter.

C. Under no circumstance shall the permit issuing authority grant an exception to the requirement that the land disturbing activity obtain a permit.

Working Draft for Part I, II, III and XIII of the Stormwater Regulations

Thursday, December 21, 2006

4VAC50-60-124. Local program: BMP maintenance.

A. Responsibility for the operation and maintenance of stormwater management BMPs in accordance with this chapter, unless assumed by a governmental agency, shall remain with the property owner and shall pass to any successor or owner. If portions of the land are to be transferred or conveyed, legally binding arrangements shall be made to pass the basic responsibility to successors in title. These arrangements shall designate for each project the property owner, governmental agency, or other legally established entity to be permanently responsible for maintenance.

B. In the case of developments where lots are to be transferred or conveyed, permanent arrangements between the seller and the buyer, which are satisfactory to the local program, shall be made to ensure continued performance in accordance with this chapter.

C. Where maintenance or repair is neglected, or the stormwater management BMP becomes a danger to public health or safety, the local program has the authority to perform the work and to recover the costs from the owner.

D. The local program shall require right-of-entry agreements or easements from the owner for purposes of inspection and maintenance.

E. The local program shall ensure that the flow and drainage patterns associated with a permanent BMP are maintained. Proposed changes to the flow and drainage patterns must be approved by the local program.

4VAC50-60-126. Local program: reporting and record keeping.

A. A local program shall report to the Department in a format provided by the Department on a quarterly basis. The information to be provided shall include but not be limited to the following:

1. Permitted project information for the quarter to include permit number, operator name, activity name, acres disturbed, date of permit coverage;

2. Permitted projects terminated for the quarter to include permit number, operator name, activity name, and date of permit termination;

3. Information on each permanent BMP accepted in the quarter to include type of BMP, GPS coordinates, acres treated, and the state waters into which the BMP will discharge;

4. Number of VSMP general permit projects inspected and the total number of inspections for the quarter;

5. Number and type of enforcement actions for the quarter; and

6. Number of exceptions applied for and whether granted or denied for the quarter.

B. A local program shall keep records in accordance with the following:

1. Permit files shall be kept by the local program for 5 years after permit termination. After 5 years, the registration statements, notices of coverage and notices of termination shall be archived at the Library of Virginia in accordance with its regulations.

2. BMP maintenance agreements, design standards and specifications, post-construction surveys, inspection reports, and maintenance records shall be maintained by the local program in perpetuity.

3. Other records shall be maintained in accordance with the regulations of the Library of Virginia.

Part IIIB

Department of Conservation and Recreation administered local programs

4VAC50-60-128. Authority and Applicability.

In the absence of delegation to a locality, the Department shall administer the local stormwater management program in accordance with §10.1-603.3 C. This part specifies the minimum technical criteria for a Department-administered stormwater management program in accordance with the Virginia Stormwater Management Law, §10.1-603.2 et seq., and the standards and criteria established in these regulations by the Board pursuant to its authority under that article. Such criteria include but are not limited to administrative, plan review, inspection, enforcement, and education and outreach components.

4VAC50-60-132. Technical criteria.

A. The Department administered local stormwater management programs shall comply with the provisions of Part II (4VAC50-60-40 et seq.).

B. When reviewing a federal project, the Department shall apply the provisions of this chapter.

4VAC50-60-134. Administrative authorities.

A. The Department is the permit issuing authority, plan approving authority, and the enforcement authority.

B. The Department or its designee is the plan reviewing authority and the inspection authority.

C. The Department shall assess and collect fees.

D. The Department may require the submission of a reasonable performance bond or such other financial surety in accordance with the criteria set forth in §10.1-603.8 prior to the issuance of the general permit and in accordance with the following:

1. The amount of the installation performance security shall be the total estimated construction cost of the stormwater management BMPs approved under the stormwater management plan, plus 25%;

2. The performance security shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain appropriate actions which may be required of the applicant in accordance with the approved stormwater management plan;

3. If the Department takes such action upon such failure by the applicant, the Department may collect from the applicant for the difference should the amount of the reasonable cost of such action exceed the amount of the security held; and

4. Within sixty days of the completion of the requirements of the VSMP permit conditions and the Department's acceptance of the Notice of Termination, such bond, cash escrow, letter of credit or other legal arrangement shall be refunded to the applicant.

E. Nothing in this chapter shall be construed as limiting the rights of other federal and state agencies from imposing stricter technical criteria or other requirements as allowed by law.

4VAC50-60-136. Stormwater management plan review.

Working Draft for Part I, II, III and XIII of the Stormwater Regulations

Thursday, December 21, 2006

A. The Department shall require new development or redevelopment projects to submit stormwater management plans for review and approval prior to commencement of the land disturbing activities.

B. The Department shall approve or disapprove stormwater management plans according to the following:

1. Stormwater management plan review shall begin upon submission of a complete plan. An initial stormwater management plan or clearing and grading plan shall not be considered a complete plan. A complete plan shall at a minimum include the following elements:

a. Contact Information including the name, address, and telephone number of the property owner and the operator and the tax reference number and parcel number of the property or properties affected;

b. A narrative description of the site and proposed stormwater management BMPs and the mechanism through which the BMPs will be operated and maintained during and after construction;

c. The location and the design of the proposed stormwater management BMPs;

d. A report identifying the geotechnical properties of the hydrologic and structural characteristics of soils utilized with the installation of stormwater management BMPs per the Virginia Stormwater Management Handbook;

e. Overall site plan that identifies the location of receiving state waters and that includes pre-development and post-development conditions for drainage areas including final drainage patterns and changes to existing contours. At a minimum, this will include a topographic base map utilizing 5 foot or less contour intervals of the site which includes all contributing drainage areas and downstream receiving areas of the proposed development and indicates existing surface water drainage including streams, ponds, culverts, ditches, and wetlands; current land use including all existing structures; locations of utilities, roads, and easements; and significant natural and manmade features not otherwise shown necessary to meet the requirements of this chapter;

f. Comprehensive hydrologic and hydraulic computations of the pre-development and post-development runoff conditions for the required design storms;

g. Good engineering practices and calculations verifying compliance with the water quality and quantity requirements of this chapter;

h. Inspection schedules, maintenance agreements and sources for funding the maintenance of all stormwater management BMPs;

i. Right-of-entry agreements or easements from the owner for purposes of inspection and maintenance;

j. Agreements between the Department and the owner that states where maintenance or repair is neglected, or the stormwater management BMP becomes a danger to public health or safety, the local program has the authority to perform the work and to recover the costs from the owner;

k. All stormwater management plans shall be appropriately sealed and signed by a professional in adherence to all minimum standards and requirements pertaining to the practice of that profession in accordance with Chapter 4 of Title 54.1 of the Code of Virginia and attendant regulations;

l. The person responsible for the development project shall certify that all land clearing, construction, land development and drainage will be done according to the approved plan; and

Working Draft for Part I, II, III and XIII of the Stormwater Regulations

Thursday, December 21, 2006

m. The person responsible for the development project shall provide proposed right-of-entry agreements or easements, acceptable to the Department, from the owner for purposes of inspection and maintenance.

2. Upon receipt of a plan, the Department or its designee shall have 15 calendar days to determine the administrative completeness of the plan and notify the applicant of its determination. If a plan is deemed to be administratively incomplete based on the criteria set out in subsection B1 of this section, the Department must identify in writing the reasons the plan is deemed deficient. If the Department does not make a determination within the 15 calendar days, the plan shall be deemed administratively complete as of the date of submission and a maximum of 45 additional calendar days will be allowed for the review of the plan.

3. Upon the determination that a plan is administratively complete, a maximum of 60 calendar days will be allowed for the review of the plan.

4. During the review period, the Department shall either approve or disapprove the plan and communicate its decision to the person responsible for the development project in writing. If the plan is not approved, the reasons for not approving the plan shall be provided in writing. Approval or denial shall be based on the plan's compliance with the Department's stormwater management program.

5. If no action is taken by the Department within the time specified above, the plan shall be deemed approved.

C. Each plan approved by the Department may be changed in accordance with the following:

1. Changes to an approved plan, not based on field inspections, shall be allowed only after the review and written approval of the Department. The Department shall have 30 calendar days for the review.

2. If field inspection by the person responsible for the development project shows that a plan is not adequate, modifications to the approved plan may be requested to address noted deficiencies. The Department shall have 15 calendar days to respond in writing either approving or disapproving such request.

3. The Department based on an inspection may require amendments to the approved plan to address the noted deficiencies and notify the person responsible for the development project of the required modifications.

4VAC50-60-138. Issuance of the VSMP General Permit for Discharges of Stormwater from Construction Activities.

The Department shall issue coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities in accordance with the following:

1. The applicant has a Department approved stormwater management plan for the land disturbing activity.

2. The applicant has submitted a complete registration statement for the VSMP General Permit for Discharges of Stormwater from Construction Activities in accordance with Part VII (4VAC50-60-360 et seq) and the registration statement has been reviewed and approved by the Department.

3. The applicant has submitted the required fee form and fee for the registration statement seeking coverage under the VSMP general permit.

4. Applicants submitting registration statements deemed to be incomplete must be notified within 10 working days that the registration statement is not complete, informed of what

Working Draft for Part I, II, III and XIII of the Stormwater Regulations

Thursday, December 21, 2006

material needs to be submitted to complete the registration statement, and that the land disturbing activity does not have VSMP general permit coverage.

5. Individual permits for qualifying land disturbing activities may be issued at the discretion of the Board or its designee pursuant to 4 VAC 50-60-410 B 3.

4VAC50-60-142. Inspections.

A. The Department or its designee shall conduct inspections of stormwater management BMPs during construction to ensure that the location and construction are consistent with the approved plan.

B. The Department shall require the person responsible for the development project to submit an as-built survey, appropriately sealed and signed by a professional in adherence to all minimum standards and requirements pertaining to the practice of that profession in accordance with Chapter 4 of Title 54.1 of the Code of Virginia and attendant regulations, certifying that the stormwater management BMPs have been constructed in accordance with the approved plan. The Department or its designee shall inspect the BMPs for compliance with the approved plan prior to the release of the construction bond.

C. The Department shall require the operator of stormwater management BMPs to conduct inspections in accordance with a recorded inspection schedule and maintenance agreement, or on an annual basis for stormwater management BMPs without a recorded inspection schedule and maintenance agreement, and provide a written report to the Department.

D. The Department or its designee shall inspect stormwater management BMPs on an annual basis or may establish an alternative inspection program which ensures that stormwater management BMPs are functioning as intended. Any alternative inspection program shall be:

1. Approved by the Board prior to implementation;
2. Established in writing;
3. Based on a system of priorities that takes into consideration the purpose and type of the facility, ownership, the contributing drainage area, and downstream conditions;
4. Demonstrated to be an enforceable inspection program conducted by the Department or its designee, not to include the property owner, that meets the intent of the regulations; and
5. Documented by inspection records.

E. Inspection reports shall be generated and kept on file for all stormwater management BMPs inspected by the Department or its designee.

F. The operator shall allow a right of entry to the Department or its designee to conduct inspections of the project.

4VAC50-60-144. Enforcement.

A. A Department administered local program shall contain the following components:

1. Informal and formal administrative enforcement procedures including:
 - a. Verbal warning and inspection reports;
 - b. Notice of corrective action;
 - c. Consent special orders and civil charges in accordance with §§ 10.1-603.2:1 7 and 10.1-603.14 D 2;
 - d. Special orders in accordance with § 10.1-603.2:1 7;
 - e. Emergency special orders in accordance with § 10.1-603.2:1 7; and
 - f. Public notice and comment period pursuant to 4 VAC 50-60-660.
2. Civil and criminal judicial enforcement procedures including:

Working Draft for Part I, II, III and XIII of the Stormwater Regulations

Thursday, December 21, 2006

- 1422 a. Schedule of civil penalties setout in subsection C;
 1423 b. Criminal penalties in accordance with § 10.1-603.14 B and C; and
 1424 c. Injunctions in accordance with §§ 10.1-603.12:4 and 10.1-603.14 D1.
 1425 B. The Department's Stormwater Management Enforcement Manual shall serve as
 1426 guidance to be utilized in enforcement actions under the Stormwater Management Act and
 1427 attendant regulations.
 1428 C. Schedule of Civil Penalties set by the Board in accordance with § 10.1-603.14 A. The
 1429 Board intends that these civil penalties generally be applied after other enforcement remedies
 1430 have been unsuccessful, in egregious situations, or for repeat offenders.
 1431

<u>Violations and Frequency of Occurrence *</u>	<u>Maximum \$\$/occurrence (occur.)/day</u>	<u>Recommended Minimum \$\$/occurrence/day</u>
<u>No Permit Registration</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$10,000/ occur./ day(s)</u>
<u>No Stormwater Pollution Prevention Plan (SWPPP)</u> <u>[No SWPPP components including</u> <u>erosion and sediment (E&S Control Plan)]</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$10,000/ occur./ day(s)</u>
<u>No approved E&S Control Plan</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$10,000/ occur./ day(s)</u>
<u>Failure to install stormwater Best</u> <u>Management Practices (BMPs) or E&S</u> <u>controls**</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$5,000/ occur./ day(s)</u>
<u>Failure to conduct required inspections</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$1,000/ occur./ day(s)</u>
<u>Operational deficiencies (e.g., failure to</u> <u>initiate stabilization measures as soon as</u> <u>practicable; failure to implement control</u> <u>measures for construction debris;</u> <u>incomplete SWPPP; SWPPP not onsite;</u> <u>Stormwater BMPs or erosion and</u> <u>sediment controls improperly installed or</u> <u>maintained; incomplete, improper or</u> <u>missed inspections.)</u>	<u>Up to \$32,500/ occur./ day(s)</u>	<u>\$500/ occur./ day(s)</u>

- 1432 * The frequency of occurrence is a maximum of per day per violation.
 1433 ** Each BMP and E&S control not installed constitutes a separate violation
 1434

1435 **4VAC50-60-146. Hearings.**

- 1436 A. Any permit applicant or permittee shall have a right to a hearing pursuant to § 10.1-
 1437 603.12:6 and all hearings held under this chapter shall be conducted in accordance with § 10.1-
 1438 603.12:7 or as otherwise provided by law.
 1439

1440 **4VAC50-60-148. Exceptions.**

Working Draft for Part I, II, III and XIII of the Stormwater Regulations

Thursday, December 21, 2006

A. A person may request an exception to the provisions of Part II (4VAC50-60-40 et seq.). A request for an exception shall be submitted, in writing, to the Department. An exception may be granted, provided that: (i) the exception is the minimum necessary to afford relief, (ii) reasonable and appropriate conditions shall be imposed as necessary upon any exception granted so that the intent of the Act and this chapter are preserved, (iii) granting the exception will not confer on the permittee any special privileges that are denied to other permittees who present similar circumstances, and (iv) exception requests are not based upon conditions or circumstances that are self-imposed or self-created.

B. Economic hardship alone is not sufficient reason to grant an exception from the requirements of this Chapter.

C. Under no circumstance shall the Department grant an exception to the requirement that the land disturbing activity obtain a permit.

4VAC50-60-152. BMP maintenance.

A. Responsibility for the operation and maintenance of stormwater management BMPs in accordance with this chapter, unless assumed by a governmental agency, shall remain with the property owner and shall pass to any successor or owner. If portions of the land are to be sold, legally binding arrangements shall be made to pass the basic responsibility to successors in title. These arrangements shall designate for each project the property owner, governmental agency, or other legally established entity to be permanently responsible for maintenance.

B. In the case of developments where lots are to be transferred or conveyed, permanent arrangements between the seller and the buyer, which are satisfactory to the Department, shall be made to ensure continued performance in accordance with this chapter.

C. Where maintenance or repair is neglected, or the stormwater management BMPs becomes a danger to public health or safety, the Department has the authority to perform the work and to recover the costs from the owner.

D. The Department shall require right-of-entry agreements or easements, acceptable to the Department, from the owner for purposes of inspection and maintenance.

E. The Department shall ensure that the flow and drainage patterns associated with a permanent BMP is maintained and proposed changes to the flow and drainage patterns must be approved by the Department.

4VAC50-60-154. Reporting and record keeping.

A. The Department, on a quarterly basis, will compile the following information:

1. Permitted project information for the quarter to include permit number, operator name, activity name, acres disturbed, date of permit coverage;

2. Permitted projects terminated for the quarter to include permit number, operator name, activity name, and date of permit termination;

3. Information on each permanent BMP accepted in the quarter to include type of BMP, GPS coordinates, acres treated, and the state waters into which the BMP will discharge;

4. Number of VSMP general permit and individual permit projects inspected and the total number of inspections for the quarter;

5. Number and type of VSMP general permit and individual permit enforcement actions for the quarter; and

6. Number of exceptions applied for and whether granted or denied for the quarter.

B. The Department shall keep records in accordance with the following:

Working Draft for Part I, II, III and XIII of the Stormwater Regulations

Thursday, December 21, 2006

1. Permit files shall be kept by the Department for 5 years after permit termination. After 5 years, the registration statements, notices of coverage and notices of termination shall be archived at the Library of Virginia in accordance with its regulations.

2. BMP maintenance agreements, design standards and specifications, post-construction surveys, inspection reports, and maintenance records shall be maintained by the Department in perpetuity or until the program is delegated.

3. Other records shall be maintained in accordance with the regulations of the Library of Virginia.

Part IIIC

Department of Conservation and Recreation local program review procedures

4VAC50-60-156. Authority and Applicability.

This part specifies the criteria that the Department will utilize in reviewing a locality's administration of a stormwater management program pursuant to §10.1-603.12 following the delegation of a local stormwater management program to that locality by the Board in accordance with the Virginia Stormwater Management Law and these regulations.

4VAC50-60-157. Stormwater Management Program Review.

A. The Department shall review each Board approved program once every five years on a review schedule approved by the Board. In addition, the Department may be requested by the locality or the general public to review a local program on a more frequent basis.

B. The review of a Board approved local program shall consist of the following:

1. A personal interview between Department staff and the local program administrator or his designee;

2. A review of the local ordinance(s) and other applicable documents;

3. A review of plans approved by the locality and consistency of application;

4. An inspection of regulated activities; and

5. A review of enforcement actions.

C. To the maximum extent practicable the Department will coordinate the reviews with other local government program reviews to avoid redundancy.

D. The Department shall determine if the program and ordinance are consistent with the state stormwater management regulations and notify the local program of its findings.

E. If the Department determines that the deficiencies noted in the review will cause the local program to be inconsistent with the Stormwater Management Act and its attendant regulations, the Department shall notify the local program concerning the deficiencies and provide a reasonable period of time for corrective action to be taken. If the local program fails to take the corrective action within the specified time, the Department may formally request the Board to take action pursuant to §10.1-603.12 of the Code of Virginia.

Part IIID

Virginia Soil and Water Conservation Board delegation procedures for local programs

4VAC50-60-158. Authority and Applicability.

Section 10.1-603.4:1 requires that the Board establish standards and procedures for delegating the authority for administering a stormwater management program to localities. In accordance with that requirement, and with the further authority conferred upon the Board by the Virginia Stormwater Management Law, §10.1-603.2 et seq., this part specifies the procedures the Board will utilize in delegating a stormwater management program to a locality.

4VAC50-60-159. Delegation Procedures for local stormwater management programs.

A. A locality required to adopt a program in accordance with §10.1-603.3 A or those electing to seek delegation must submit to the Board an application package which, at a minimum, contains the following:

1. The local program ordinance(s);
2. A funding and staffing plan;
3. The policies and procedures, including but not limited to, agreements with Soil and Water Conservation Districts, adjacent localities, or other entities, for the administration, plan review, permit issuance, inspection and enforcement components of the program; and
4. The process by which the locality will collect permit fees and submit for deposit on a monthly basis to the Virginia Stormwater Management Fund.

B. Upon receipt of an application package, the Board or its designee shall have 15 days to determine the completeness of the application package. If an application package is deemed to be incomplete based on the criteria setout in subsection A of this section, the Board or its designee must identify in writing the reasons the application package is deemed deficient.

C. Upon receipt of a complete application package, the Board or its designee shall have a maximum of 90 calendar days for the review of the application package. During the 90-day review period, the Board or its designee shall either approve or disapprove the application and communicate its decision to the locality in writing. If the application is not approved, the reasons for not approving the application shall be provided to the locality in writing. Approval or denial shall be based on the application's compliance with the Virginia Stormwater Management Law and these regulations.

Part XIII

Fees

4VAC50-60-700. Purpose.

Sections 10.1-603.4 and 10.1-603.5 of the Code of Virginia authorize the establishment of a statewide fee schedule for stormwater management and state agency projects. ~~These regulations in this~~ This part establish ~~establishes~~ the fee assessment and ~~the collection and~~ distribution system for those fees.

4VAC50-60-710. Definitions. Repealed

4VAC50-60-710. Definitions.

Working Draft for Part I, II, III and XIII of the Stormwater Regulations

Thursday, December 21, 2006

~~The following words and terms used in this chapter have the following meanings:~~

~~"Permit applicant" means for the purposes of this part any person submitting a permit application for issuance, reissuance, or modification, except as exempted by 4VAC50-60-740, of a permit or filing a registration statement or permit application for coverage under a general permit issued pursuant to the Act and this chapter.~~

~~"Permit application" means for the purposes of this part the forms approved by the Virginia Soil and Water Conservation Board for applying for issuance or reissuance of a permit or for filing a registration statement or application for coverage under a general permit issued in response to the Act and this chapter. In the case of modifications to an existing permit requested by the permit holder and not exempted by 4VAC50-60-740, the application shall consist of the formal written request and any accompanying documentation submitted by the permit holder to initiate the modification.~~

4VAC50-60-720. Authority.

The authority for this part is pursuant to §§10.1-603.4 and 10.1-603.4:1 of the Code of Virginia and enactment clause 7 governing the transfer of the relevant provisions of Fees for Permits and Certificates Regulations, 9VAC25-20, in accordance with Chapter 372 of the 2004 Virginia Acts of Assembly.

4VAC50-60-730. Applicability.

A. This part applies to:

1. ~~All permit applicants for issuance of persons seeking coverage of a MS4 system under a new permit or reissuance of an existing permit, except as specifically exempt under 4VAC50-60-740 A.~~ The fee due shall be as specified under 4VAC50-60-800 ~~or 4VAC50-60-820.~~

2. All permittees who request that an existing MS4 individual permit be modified, except as specifically exempt under 4VAC50-60-740 ~~A-1~~ of this chapter. The fee due shall be as specified under 4VAC50-60-810.

3. All persons seeking coverage under the General Permit for Discharges of Stormwater From Construction Activities or a person seeking an individual permit for Discharges of Stormwater From Construction Activities. The fee due shall be as specified under 4VAC50-60-820.

4. All permittees who request modifications to or transfers of their existing registration statement for coverage under a General Permit for Discharges of Stormwater From Construction Activities or of an individual permit for Discharges of Stormwater From Construction Activities. The fee due shall be as specified under 4VAC50-60-825 in addition to any additional fees necessary pursuant to 4VAC50-60-820 due to an increase in acreage.

B. ~~An applicant for a permit involving a permit that is to be revoked and reissued~~ Persons who are applicants for an individual permit as a result of existing permit revocation shall be considered an applicant for a new permit. The fee due shall be as specified under 4VAC50-60-800.

Persons whose coverage under the General Permit for Discharges of Stormwater From Construction Activities has been revoked shall reapply for an individual permit for Discharges of Stormwater From Construction Activities. The fee due shall be as specified under 4VAC50-60-820.

Working Draft for Part I, II, III and XIII of the Stormwater Regulations

Thursday, December 21, 2006

C. ~~Permit maintenance fees~~ Permit and permit coverage maintenance fees may apply to each Virginia Stormwater Management Permit (VSMP) permit holder. The fee due shall be as specified under 4VAC50-60-830.

4VAC50-60-740. Exemptions.

No permit application fees will be assessed to:

1. Permittees who request minor modifications or minor amendments to permits as defined in 4VAC50-60-10.
2. Permittees whose permits are modified or amended at the initiative of the permit-issuing authority.

4VAC50-60-750. Due dates for Virginia Stormwater Management Program (VSMP) Permits.

A. ~~Permit application fees for all new permit applications are due on the day a permit application is submitted and shall be~~ Requests for a permit, permit modification, or general permit coverage shall not be processed until the fees required pursuant to this part are paid in accordance with 4VAC50-60-760. ~~Applications will not be processed without payment of the required fee.~~

~~B. A permit application fee is due on the day a permit application is submitted for a major modification that occurs (and becomes effective) before the stated permit expiration date. There is no application fee for a major modification or amendment that is made at the permit-issuing authority's initiative.~~

~~C.B. Permit~~ Individual permit or general permit coverage maintenance fees shall be paid annually to the permit-issuing authority by ~~October 1 of each year~~ the anniversary date of permit issuance or general permit coverage. No permit will be reissued or automatically continued without payment of the required fee. Individual permit or general permit coverage maintenance fees shall be applied until a Notice of Termination has been received and approved.

MS4 permittees currently paying maintenance fees on October 1 of each year shall continue to pay the maintenance fee on October 1 until their current permit expires. Upon reissuance of the MS4 permit, maintenance fees shall be paid on the anniversary date of the reissued permit.

~~Effective April 1, 2005, any permit holder whose permit is effective as of April 1 of a given year (including permits that have been administratively continued) shall pay the permit maintenance fee or fees to the permit-issuing authority by October 1 of that same year.~~

4VAC50-60-760. Method of payment.

A. Fees shall be submitted electronically or be paid by check, draft or postal money order payable to:

1. ~~the~~ The Treasurer of Virginia, for a MS4 individual or general permit or for a coverage issued under the General Permit for Discharges of Stormwater From Construction Activities by the Department, ~~to the permit-issuing authority,~~ and must be in U.S. currency, except that agencies and institutions of the Commonwealth of Virginia may submit Interagency Transfers for the amount of the fee. To pay electronically, go to the ~~Department of Conservation and Recreation's~~ stormwater management section of the ~~Department's~~ Department of Conservation and Recreation's public website at <http://www.dcr.virginia.gov>. Fees not submitted

Working Draft for Part I, II, III and XIII of the Stormwater Regulations

Thursday, December 21, 2006

electronically shall be sent to the following address: ~~Virginia Department of Conservation and Recreation, Division of Finance, Accounts Payable, 203 Governor Street, Richmond, VA 23219.~~

Virginia Department of Conservation and Recreation

Division of Finance, Accounts Payable

203 Governor Street

Richmond, VA 23219

2. The local program authority, for coverage issued under the General Permit for Discharges of Stormwater From Construction Activities by a local program, and must be in U.S. currency.

B. Required information for Department issued permits or permit coverage: All applicants ~~for new permit issuance, permit reissuance, or permit modification~~ shall submit the following information along with the fee payment or utilize the Department of Conservation and Recreation Permit Application Fee Form:

1. Applicant name, address and daytime phone number.
2. Applicant Federal Identification Number (FIN).
3. The name of the facility/activity, and the facility/activity location.
4. The type of permit applied for.
5. Whether the application is for a new permit issuance, permit reissuance or permit modification.
6. The amount of fee submitted.
7. The existing permit number, if applicable.

4VAC50-60-770. Incomplete payments and late payments.

All incomplete payments will be deemed as nonpayments. The permit issuing authority shall provide notification to the applicant of any incomplete payments.

Interest may be charged for late payments at the underpayment rate set out by the U.S. Internal Revenue Service established pursuant to §6621(a)(2) of the Internal Revenue Code. This rate is ~~prescribed~~ set forth in §58.1-15 of the Code of Virginia and is calculated on a monthly basis at the applicable periodic rate.

A 10% late payment fee may be charged to any delinquent (over 90 days past due) account.

The permit-issuing authority is entitled to all remedies available under the Code of Virginia in collecting any past due amount ~~and may recover any attorney's fees and/or other administrative costs incurred in pursuing and collecting any past due amount.~~

4VAC50-60-780. Deposit and use of fees.

All fees collected by the board, local program, or department in response to this chapter shall be deposited into a special nonreverting fund.

1. Fees collected by the Department shall be deposited into ~~known as~~ the Virginia Stormwater Management Fund ~~established by~~, and shall be used and accounted for as specified in §10.1-603.4:1 of the Code of Virginia. Fees collected by the Department shall be exempt from statewide indirect costs charged and collected by the Department of Accounts.

2. Fees collected by a local program shall be deposited into a special fund created by the program authority and used to carry out the local program's responsibilities per Part II and Part IIIA of these regulations.

Working Draft for Part I, II, III and XIII of the Stormwater Regulations

Thursday, December 21, 2006

Whenever the board has delegated a stormwater management program to a ~~locality local~~ program or is required to do so by the Act, no more than 30% of the total revenue generated by the statewide stormwater management fees collected within the locality in accordance with 4 VAC 50-60-820 shall be remitted to the State Treasurer for deposit in the Virginia Stormwater Management Fund.

4VAC50-60-790. General.

~~Each permit application for a new permit each permit application for reissuance of a permit, each permit application for major modification of a permit, and each revocation and reissuance of a permit is a~~ The fees for permits, general permit coverage, permit or registration statement modification, or permit transfers are considered separate actions and shall be assessed a separate fee, as applicable. ~~The fees for each type of permit that the permit issuing authority has the authority to issue, reissue or modify will be as specified in this part.~~

4VAC50-60-800. Fee schedules for VSMP Municipal Separate Storm Sewer System new permit issuance.

The following fee schedule applies to permit applications for issuance of a new VSMP Municipal Separate Storm Sewer System permit.

VSMP Municipal Stormwater / MS4 Individual (Large and Medium)	\$21,300 <u>\$12,000</u>
VSMP Municipal Stormwater / MS4 Individual (Small)	\$2,000 <u>\$6,000</u>
VSMP Municipal Stormwater / MS4 General Permit (Small)	\$600 <u>\$2,700</u>

4VAC50-60-810. Fee schedules for major modification of MS4 individual permits or certificates requested by the permittee-permittee.

The following fee ~~schedules~~ schedule ~~apply~~ applies to applications for major modification of an individual MS4 permit requested by the permittee:

~~The permit application fees listed in the table below apply to a major modification of a VSMP Municipal Separate Storm Sewer Systems Permit that occurs (and becomes effective) before the stated permit expiration date.~~

VSMP Municipal Stormwater / MS4 Individual (Large and Medium)	\$10,650 <u>\$4,000</u>
VSMP Municipal Stormwater / MS4 Individual (Small)	\$1,000 <u>\$2,000</u>

4VAC50-60-820. Fees for filing permit applications (registration statements) an individual permit or for coverage under the general permits permit issued by the permit-issuing authority for discharges of stormwater from construction and post construction activities.

The following fees apply to ~~filing of permit applications (registration statements) for all general permits issued by the permit issuing authority, except VSMP Stormwater Construction General Permits~~ an individual permit or coverage under the general permit for discharges of stormwater from construction and post construction activities.

Working Draft for Part I, II, III and XIII of the Stormwater Regulations

Thursday, December 21, 2006

The fee for filing a permit application (registration statement) for coverage under a VSMP stormwater general permit issued by the permit issuing authority shall be:

	<u>DCR administered local program</u>	<u>Locality administered program</u>
VSMP General / Stormwater Management - Phase I Land Clearing (Large Construction Activity - Sites or areas within common plans of development or sale equal to or greater than 5 100 acres)	\$500 <u>\$6,877</u>	<u>\$9,824</u>
VSMP General / Stormwater Management - Phase I Land Clearing (Large Construction Activity - Sites or areas within common plans of development or sale equal to or greater than 50 acres and less than 100 acres)	<u>\$4,357</u>	<u>\$6,224</u>
VSMP General / Stormwater Management - Phase I Land Clearing (Large Construction Activity - Sites or areas within common plans of development or sale equal to or greater than 10 acres and less than 50 acres)	<u>\$3,207</u>	<u>\$4,581</u>
VSMP General / Stormwater Management - Phase I Land Clearing (Large Construction Activity - Sites or areas within common plans of development or sale equal to or greater than 5 acres and less than 10 acres)	<u>\$2,427</u>	<u>\$3,467</u>
VSMP General / Stormwater Management - Phase II Land Clearing (Small Construction Activity - Sites or areas within common plans of development or sale equal to or greater than 1 acre and less than 5 Acres)	\$300 <u>\$1,971</u>	<u>\$2,816</u>
VSMP General / Stormwater Management - Phase II Land Clearing (Small Construction Activity - Sites (within designated areas of Chesapeake Bay Act localities) equal to or greater than 0.5 acre and less than 1 acre)	<u>\$1,073</u>	<u>\$1,533</u>
VSMP General / Stormwater Management - Phase II Land Clearing (Small Construction Activity - Sites (within designated areas of Chesapeake Bay Act localities) equal to or greater than 2,500 square feet and less than 0.5 acre)	<u>\$210</u>	<u>\$300</u>
VSMP General / Stormwater Management - Phase II Land Clearing (Small Construction Activity - Areas within common plans of development or sale less than 1 acre)	<u>\$210</u>	<u>\$300</u>
VSMP Individual Permit for Discharges of Stormwater From Construction Activities	<u>\$15,000</u>	<u>NA</u>

4VAC50-60-825. Fees for the modification or transfer of individual permits or of registration statements for the General Permit for Discharges of Stormwater From Construction Activities.

The following fees apply to modification or transfer of individual permits or of registration statements for the General Permit for Discharges of Stormwater From Construction Activities.

Working Draft for Part I, II, III and XIII of the Stormwater Regulations

Thursday, December 21, 2006

1755

VSMP General / Stormwater Management - Phase I Land Clearing (Large Construction Activity - Sites or areas within common plans of development or sale equal to or greater than 100 acres)	<u>\$688</u>
VSMP General / Stormwater Management - Phase I Land Clearing (Large Construction Activity - Sites or areas within common plans of development or sale equal to or greater than 50 acres and less than 100 acres)	<u>\$436</u>
VSMP General / Stormwater Management - Phase I Land Clearing (Large Construction Activity - Sites or areas within common plans of development or sale equal to or greater than 10 acres and less than 50 acres)	<u>\$321</u>
VSMP General / Stormwater Management - Phase I Land Clearing (Large Construction Activity - Sites or areas within common plans of development or sale equal to or greater than 5 acres and less than 10 acres)	<u>\$243</u>
VSMP General / Stormwater Management - Phase II Land Clearing (Small Construction Activity - Sites or areas within common plans of development or sale equal to or greater than 1 acre and less than 5 Acres)	<u>\$197</u>
VSMP General / Stormwater Management - Phase II Land Clearing (Small Construction Activity - Sites (within designated areas of Chesapeake Bay Act localities) equal to or greater than 0.5 acre and less than 1 acre)	<u>\$107</u>
VSMP General / Stormwater Management - Phase II Land Clearing (Small Construction Activity - Sites (within designated areas of Chesapeake Bay Act localities) equal to or greater than 2,500 square feet and less than 0.5 acre)	<u>\$21</u>
VSMP General / Stormwater Management - Phase II Land Clearing (Small Construction Activity - Areas within common plans of development or sale less than 1 acre)	<u>\$21</u>
VSMP Individual Permit for Discharges of Stormwater From Construction Activities	<u>\$5,000</u>

1756

1757 **4VAC50-60-830. Permit maintenance fees.**

1758 A. The following annual permit maintenance fees apply to each VSMP permit identified
1759 below, including expired permits that have been administratively continued:
1760

VSMP Municipal Stormwater / MS4 Individual (Large and Medium)	<u>\$3,800</u> <u>\$8,000</u>
VSMP Municipal Stormwater / MS4 Individual (Small)	<u>\$400</u> <u>\$4,000</u>
VSMP Municipal Stormwater / MS4 General Permit (Small)	<u>\$2,000</u>
VSMP General / Stormwater Management - Phase I Land Clearing (Large Construction Activity - Sites or areas within common plans of development or sale equal to or greater than 5 100 acres)	<u>\$0</u> <u>\$1,375</u>
VSMP General / Stormwater Management - Phase I Land Clearing (Large Construction Activity - Sites or areas within common plans of development or sale equal to or greater than 50 acres and less than 100 acres)	<u>\$871</u>
VSMP General / Stormwater Management - Phase I Land Clearing (Large Construction Activity - Sites or areas within common plans of development or sale	<u>\$641</u>

Working Draft for Part I, II, III and XIII of the Stormwater Regulations

Thursday, December 21, 2006

<u>equal to or greater than 10 acres and less than 50 acres)</u>	
<u>VSMP General / Stormwater Management - Phase I Land Clearing (Large Construction Activity - Sites or areas within common plans of development or sale equal to or greater than 5 acres and less than 10 acres)</u>	<u>\$485</u>
<u>VSMP General / Stormwater Management - Phase II Land Clearing (Small Construction Activity - Sites or areas within common plans of development or sale equal to or greater than 1 acre and less than 5 Acres)</u>	<u>\$0</u> <u>\$394</u>
<u>VSMP General / Stormwater Management - Phase II Land Clearing (Small Construction Activity – Sites (within designated areas of Chesapeake Bay Act localities) equal to or greater than 0.5 acre and less than 1 acre)</u>	<u>\$215</u>
<u>VSMP General / Stormwater Management - Phase II Land Clearing (Small Construction Activity - Sites (within designated areas of Chesapeake Bay Act localities) equal to or greater than 2,500 square feet and less than 0.5 acre)</u>	<u>\$42</u>
<u>VSMP General / Stormwater Management - Phase II Land Clearing (Small Construction Activity - Areas within common plans of development or sale less than 1 acre)</u>	<u>\$42</u>
<u>VSMP Individual Permit for Discharges of Stormwater From Construction Activities</u>	<u>\$3,000</u>

1761
1762 ~~B. An additional permit maintenance fee of \$1,000 shall be paid annually by permittees~~
1763 ~~in a toxics management program. Any facility that performs acute or chronic biological testing~~
1764 ~~for compliance with a limit or special condition requiring monitoring in a VPDES permit is~~
1765 ~~included in the toxics management program.~~
1766